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In The
# Supreme Court of the United States

STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

*Petitioner,*

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

*Respondents.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF OF *AMICI CURIAE* STATES OF NORTH DAKOTA, WYOMING, ALABAMA, DELAWARE, IOWA, NEBRASKA, NEVADA, OKLAHOMA, SOUTH DAKOTA, UTAH, AND VIRGINIA IN SUPPORT OF PETITIONER

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## BRIEF OF *AMICI CURIAE*

The States of North Dakota, Wyoming, Alabama, Delaware, Iowa, Nebraska, Nevada, Oklahoma, South Dakota, Utah, and Virginia, as *amici curiae* ("*Amici* States"), respectfully submit this brief in support of Petitioner the State of Alaska. *Amici* States oppose the decision below of the United States Court of Appeals for the Ninth Circuit, which skews the federal-state partnership envisioned by Congress under the Clean Air Act (the "Act"), 42 U.S.C. §§ 7401-7671q, in general and, in particular, under the Act's Prevention of Significant Deterioration ("PSD") provisions, *id.*, §§ 7470-79. *Amici* States urge this Court to reverse in order to correct the imbalance wrought by the Ninth Circuit's decision.

## STATEMENT OF INTEREST

Protection of public health and the environment is of manifest importance to all States. Air pollution affects health and quality of life, and it has obvious impacts on the environment. As a result, *Amici* States fully support the goals and policies that underlie and are embodied in the Act. At the same time, *Amici* States share an interest in ensuring that the Act is construed in a way that protects the social and economic well-being of their citizens, as well as their public health and welfare. *Amici* States also have a compelling interest in protecting their congressionally-mandated authority under the Act, in ensuring sound PSD permitting decisions, in avoiding confusion concerning the scope of state-versus-federal authority, and in promoting the orderly function of their administrative decision-making processes under the PSD program.

Because the analysis and conclusion of the Ninth Circuit decision are contrary to each of these interests, *Amici* States support reversal of the judgment below.

## SUMMARY OF ARGUMENT

The Clean Air Act recognizes and respects the tension that can arise between environmental protection and social and economic impacts on a community. Congress expressly reserved to the States the role of balancing those competing concerns under the Act's PSD provisions, which apply in "clean air" areas of the country. The Act requires new sources of pollutant emissions to use Best Available Control Technology ("BACT") in areas where air quality is already better than the National Ambient Air Quality Standards (the "NAAQS"). In the statutory definition of BACT, Congress provided that the States must decide what constitutes BACT for a particular source, based on a consideration of "energy, environmental, and economic impacts and other costs." 42 U.S.C. § 7479(3).

Nowhere in the language or the structure of the Act, or in its legislative history, did Congress state or imply that the States' BACT determinations are merely preliminary. Yet the Ninth Circuit erroneously held that the States' BACT decisions are only "initial" and are subject to EPA's "ultimate" authority to override the States' determinations. Pet. App. at 10a-11a. The Ninth Circuit wrongly relied on 42 U.S.C. § 7413(a)(5)(A) and 42 U.S.C. § 7477 for EPA's new-found "ultimate" authority to veto state BACT decisions. Those provisions permit EPA to issue enforcement orders to redress violations of the Act's "requirements," but not to preempt discretionary state



decisionmaking with which EPA simply subjectively disagrees. Despite the clear statutory assignment of authority to the States, the Ninth Circuit's decision effectively strips the State of Alaska of its primary role of weighing the statutory BACT factors in its implementation of its PSD program.

In addition to misconstruing the Act's BACT and enforcement provisions, the Ninth Circuit's decision, if uncorrected, will significantly harm the States' environmental programs and, as a result, will harm the citizens of the States and the nation as a whole.

*First*, as illustrated by this case, the environment itself will suffer if the States are squeezed out of their crucial role in PSD permitting decisions. Congress had a good reason for explicitly making the States, not EPA, responsible for determining BACT: The States simply do a better job than EPA can or will do in making these essentially local judgments. The end-result of the Ninth Circuit's decision, if affirmed, will be flawed decisions with attendant adverse environmental and social consequences.

*Second*, permit applicants will be uncertain as to whether and when EPA will choose to inject itself into the state permit-issuance process, and as to whether they can participate in that process with confidence that they can rely on the state-issued PSD permit. That uncertainty, in turn, will frustrate growth, thereby depriving the States of control over the "growth management decisions" that Congress specifically "left . . . for resolution by the states." *Alabama Power Co. v. Costle*, 636 F.2d 323, 364 (D.C. Cir. 1980).

*Third*, the administrative process will be thrown into disarray; state administrative procedures for hearings on

and review of permitting decisions will be rendered superfluous as applicants work directly with EPA instead of through State air programs. Absent defined procedures in the context of administrative hearings, there will be no opportunity to test the bases for EPA's insistence on alternative BACT determinations, and no genuine administrative records to allow informed judicial review. EPA's bypassing of orderly administrative review procedures will have two negative consequences: It will impair the quality of ultimate BACT decisions while, ironically, making EPA's unilateral determinations virtually unreviewable.

## ARGUMENT

### I. The Ninth Circuit's Decision Wrongly Deprives The States Of Their Authority To Determine BACT

#### A. Congress Expressly Reserved To The States Specific Authority Under The Clean Air Act

In the Clean Air Act, Congress assigned distinct roles to the federal and state governments. A key federal role is the promulgation of the NAAQS, which define the amount of pollutants that may exist in a given area without harming public health and welfare. 42 U.S.C. § 7409. Despite EPA's responsibility for setting the NAAQS, which apply nationally, the Act makes clear that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments." *Id.* § 7401(a)(3). Thus, the States, through their approved State Implementation Plans ("SIPs"), are charged with implementation of the federally-set NAAQS. *Id.* § 7410. As this Court has recognized, "Congress plainly left with the



States, so long as the [NAAQS] were met, the power to determine which sources would be burdened by regulation and to what extent." *Union Elec. Co. v. EPA*, 427 U.S. 246, 269 (1976); *see also Train v. Natural Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975).

Congress also gave the federal and state governments distinct functions in the implementation of the PSD program. EPA sets the allowable increments that may be consumed for a particular regulated pollutant. 42 U.S.C. § 7476(a).[1] The States, meanwhile, determine the areas in which the increments will apply, and ensure through their SIPs that the increments are not exceeded. *Id.* § 7474(a); 40 C.F.R. § 51.166(a) (1999). EPA "is without authority to dictate to the States their policy for management of the consumption of allowable [PSD] increments." *Alabama Power*, 636 F.2d at 361. Rather, "assuming such compliance" with the maximum limitations defined by EPA through the increments, "growth-management decisions were left by Congress for resolution by the states." *Id.* at 364.

When Congress gave the States responsibility for managing the PSD increments, it acted consistently with EPA's own earlier judgment that implementation of the PSD program is uniquely local in nature:

> Any policy to prevent significant deterioration involves difficult questions regarding how the

[1] Congress has set PSD increments for two pollutants itself. 42 U.S.C. §§ 7473(b), 7475(d). EPA must set allowable PSD increments for all other regulated pollutants for which it establishes NAAQS. *Id.* § 7476(a).

> land in any area is to be used. Traditionally, these land use decisions have been considered the prerogative of local and State governments, and . . . the primary opportunity for making these decisions is reserved for the States and local governments. . . . In the Administrator's judgment, this matter normally should not be handled at the Federal level, . . .

39 Fed. Reg. 31000, 31001 (Aug. 27, 1974).

Not surprisingly in light of the Act's allocation to state and local governments of responsibility for "air pollution prevention . . . and air pollution control at its source," 42 U.S.C. § 7401(a)(3), Congress also charged those States with EPA-approved SIPs with responsibility for BACT determinations. The Act defines BACT as "an emission limitation . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility . . . " 42 U.S.C. § 7479(3); *see also* 40 C.F.R. § 51.166(b)(12) (1999).[2]

Beyond making clear that States – not EPA – would select BACT, Section 169(3) confirms that the determination is a discretionary one. While the Act identifies the factors that the States must consider, the ultimate selection of BACT represents a judgment call, and there is no one "correct" BACT for a given source. That is precisely what Congress was thinking when it enacted the PSD provisions: "The decision regarding the actual implementation of best

[2] States with approved SIPs are the "permitting authorit[ies]" under Section 169(3).



available technology is a key one, and the [Act] places this responsibility with the State, to be determined in a case-by-case judgment." S. REP. NO. 95-127, at 31 (1977). Moreover, "the phrase [BACT] has broad flexibility in how it should and can be interpreted, depending on site." *Id.*

Thus, the plain language of the statute itself, its legislative history, decisions of this Court and lower federal courts, and EPA's own interpretation of the PSD program confirm that States must determine BACT for a particular source, and must exercise discretion in that process.

### B. EPA May Not Usurp Reserved State Authority Through Enforcement Orders

Here, the State of Alaska exercised its authority to determine BACT in accordance with the Act. It considered a variety of possible technologies in light of the statutory factors listed in Section 169(3); it engaged in a lengthy dialogue with the permit applicant, EPA, and other interested parties; it independently researched the pros and cons of the sundry of potentially available technologies; it prepared preliminary, draft final, and final technical analysis reports; and it ultimately selected a technology known as "Low NOx" as BACT.

Where did Alaska go wrong? Stated bluntly, it had the audacity to disagree with EPA and select a technology different from the one that EPA favored – selective catalytic reduction or "SCR". EPA, offended by Alaska's failure to march in step, responded by issuing a series of enforcement orders under Sections 113(a)(5)(A) and 167 of the Act. Section 113(a)(5)(A) permits EPA to issue orders prohibiting the construction of new sources or the modification of

existing sources when the agency "finds that a State is not acting in compliance with any requirement or prohibition of [the Act]" relating to such construction or modification. 42 U.S.C. § 7413(a)(5)(A). Section 167 permits orders "as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements" of the PSD provisions. *Id.* § 7477.

EPA asserted, and the Ninth Circuit accepted, that Sections 113(a)(5)(A) and 167 vest EPA with broad authority to use enforcement orders to override a State's BACT selection whenever EPA disagrees with the State's "improper determination." Pet. App. at 10a. The Ninth Circuit reasoned as follows: (a) Subjecting a facility to BACT is a "requirement" of the Act and its PSD sub-part, *id.* at 8a; (b) when EPA disagreed with Alaska's choice of Low NOx as BACT, it concluded that Alaska "had not complied with the BACT requirement," *id.* at 9a; and (3) ergo, EPA could invoke its enforcement powers to override Alaska's decision, *id.* at 10a-11a. On this basis, the Ninth Circuit held that Alaska "made the initial BACT decision," *id.* at 9a, but "EPA has the ultimate authority" to determine BACT, *id.* at 10a-11a.

The Ninth Circuit's logic, however, is overly simplistic and flawed. It assumes that the "requirement" of the Act, for purposes of Sections 113(a)(5)(A) and 167, is the choice of one particular technology as BACT, when, in fact, the Act requires only that a State undertake a BACT analysis and select the technology that the State deems appropriate in light of the statutory factors (and one that does not exceed the maximum increment consumption). The State's chosen technology might or might not coincide with EPA's choice of BACT, if EPA were the decision maker. The point, however, is that EPA is *not* the decision maker under



Section 169(3), whose plain language assigns that role to the "permitting authority," namely, the State of Alaska in this case. The Ninth Circuit essentially ignored that section, which, by defining BACT as a discretionary State judgment, necessarily defines what the BACT "requirement" is under the Act. Yet, the Ninth Circuit inexplicably concluded that "[n]othing in the BACT definition of Section 169(3) limits the EPA's authority." Pet. App. at 11a.

The Ninth Circuit held that "[t]he structure and legislative history of the Act" further support the court's endorsement of a radical shift in power from the States to EPA. *Id.* at 9a. The court reviewed various amendments to the Act since its original enactment in 1963, concluding that "[f]ollowing disappointing state response to air pollution concerns, Congress has consistently increased over time federal authority in pollution control." *Id. Amici* States do not dispute the legislative events that the court summarized; they do, however, challenge the relevance of those events to the issue in this case.

For example, the fact that in 1970 Congress directed EPA to publish NAAQS and directed the States to develop SIPs to meet the NAAQS, *see id.*, has no bearing on the then-non-existent PSD program; the federal concern in 1970 over "dirty air" areas was distinct from the later focus of the PSD program on preserving "clean air" areas. Moreover, as discussed *supra* at 4-5, but ignored by the Ninth Circuit, Congress expressly allocated authority to *implement* the NAAQS to the States. Similarly, the "internal industry 'pressure'" referred to by the Ninth Circuit as one basis for Congress's adoption of the PSD provisions in 1977, Pet. App. at 10a (quoting legislative history), resulted in federally-set maximum increments, but *not* federal control over the implementation of the PSD program; rather,

Congress specifically gave that responsibility to the States. *See supra* at 4-5.

Missing from the Ninth Circuit's analysis of the Act's historical development are the most important points of all – acknowledgments that (a) in 1977, Congress unambiguously gave the States the primary authority to implement the PSD program, including the duty to determine BACT, and (b) Congress has not reduced that authority since 1977.

Under the Ninth Circuit's decision, EPA completely controls a State's air program, both under the PSD provisions (to which Section 167 applies) and under the State's SIP (to which Section 113(a)(5) applies). No matter that Congress specifically allocated authority to the States – EPA's enforcement power trumps that State authority. No matter that the particular issue calls for the exercise of discretion and that the Act does not require one objectively-definable outcome – if EPA disagrees with the State's subjective analysis, it may steamroll the State through the exercise of its "ultimate" enforcement authority.

The Ninth Circuit's essential holding – which the States urge this Court to reverse – is that the Act gives the States only "initial responsibility" for PSD permitting decisions, but that "EPA has the ultimate authority to decide" BACT. Pet. App. at 10a-11a. This sweeping pronouncement, based on an unduly-broad construction of the word "requirement," relegates state programs to mere preliminary involvement with no substantial decision-making power in the issuance of PSD permits. State authority to determine BACT, and likely with respect to other issues under the Act as well, is rendered an illusion.



Truly, the Ninth Circuit's decision – upholding EPA's effort to bootstrap a difference of opinion into a violation of law – turns the Clean Air Act on its head.

## II. The Ninth Circuit Decision Will Harm State Air Programs And Interests

### A. Divesting States Of Their Primary Authority To Determine BACT Will Impede Informed Decisions

The cooperative federalism embodied in the PSD program – with EPA setting the nationally-applicable standards and the States implementing those standards – is not merely what Congress mandated; it makes good sense. Back in the early years of the Clean Air Act, Professor Richard Stewart noted the "sobering fact ... that environmental quality involves too many intricate, geographically variegated physical and institutional interrelations to be dictated from Washington." Richard B. Stewart, *Pyramids of Sacrifice: Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 YALE L.J. 1196, 1266 (1977).[9]

[9] In 1977, Professor Stewart also bemoaned the poor record of the States in the implementation of their own and the then-existing federal environmental laws. *Id.* In the quarter century since Professor Stewart wrote, however, the States have undeniably met the challenge in the realm of environmental law. *See generally* R. Steven Brown, *The States Protect the Environment*, ECOSTATES (Summer 1999) (http://www.sso.org/ecos/publications/statesarticle.htm) (reviewing statistics and trends that support the author's conclusion that "[t]he States have become the primary environmental protection agencies across the nation").

Twenty-five years of experience have borne out those early observations. Commentator after commentator has opined, and study after study has confirmed, that "[s]ubstantial participation by state officials and state bureaucracies is essential if the federal government is to achieve its environmental goals." John P. Dwyer, *The Practice of Federalism Under the Clean Air Act*, 54 MD. L. REV. 1183, 1216 (1995). "The local and regional nature of many environmental problems means that local knowledge and expertise is necessary to develop proper solutions. Such localized knowledge is simply beyond the reach of even the most intrepid federal regulators." Jonathan H. Adler, *Let 50 Flowers Bloom: Transforming the States into Laboratories of Environmental Policy*, 31 ENVT'L. L. REP. 11284, 11286 (Nov. 2001);[4] see also Mary A. Gade, *When the States Come Marching In*, 10 NAT. RES. & ENV'T 3, 4 (1996) ("[S]tates are closest to their constituents and problems, bringing a necessary sensitivity and perspective to local environmental issues that even EPA's ten regional offices, often many hundreds of miles away, can't have."); Nat'l Acad. of Public Admin., Report to Congress, *Setting Priorities, Getting Results: A New Direction for the Environmental Protection Agency* 2 (1995) ("EPA and Congress need to hand more responsibility and decision-making authority over to the states and localities. . . . [In] those states that are capable and willing to take over functions

[4] Professor Adler advocates an increased state role in *establishing* environmental policy, including, for example, the setting of pollution standards. The issue in this appeal is far tamer – whether the States are entitled to exercise the discretion that Congress gave to them in *implementing* policies that EPA has set and that are not challenged here.



from the federal government, . . . EPA should stay out of the way, with no second-guessing.").

A meaningful state role in implementation is imperative for obvious reasons. Ours is a huge and diverse nation "with an astonishing range of environmental conditions and problems." Dwyer, *supra*, at 1218. To wit:

> Differences in climate and weather (*e.g.*, patterns of temperature, wind, rainfall, humidity), geography (*e.g.*, deserts, mountains, plains, coastal regions), the relative importance of sources and types of pollution (*e.g.*, cars, large utilities and factories, numerous small sources), environmental and public health risks (*e.g.*, special need for visibility control, size of affected human population), and economic conditions confound attempts to have a successful, highly centralized regulatory program. . . . The practical need to tailor implementation and enforcement to local conditions requires decisionmakers who have, in addition to an adequate knowledge of these conditions, a sympathetic orientation toward local conditions. Effective implementation requires some consideration and accommodation of local concerns. Precisely because they are local, and locally accountable, state and local officials bring that knowledge and orientation to implementation and enforcement.

*Id.*

The events in Alaska that gave rise to this case prove the wisdom of congressional assignment to the States of authority for PSD permitting decisions. Alaska took its implementation responsibilities seriously and committed ample resources to select the most effective, yet feasible, control technology. Moreover, unlike EPA, the State had a

unique appreciation for both the Mine's importance to the local economy, and for its actual operation. Thus, Alaska selected Low NOx in part because the State could not economically justify the steeply higher cost of SCR in light of the value of the Mine's expansion in a region of the State marked by severe underemployment and largely populated by Native Americans. J.A. 206-08.

Equally important, during the permitting process, Alaska appreciated a fact that was lost on EPA – that the State could achieve an even greater emissions reduction through the negotiated installation of Low NOx on all seven of the Mine's generators, even though the Act required BACT on only two engines. Alaska had concluded that the use of Low NOx on all seven engines would have achieved "nearly the same, if not a greater . . . , level of control as installing SCR on only two engines." C.R. 21-005. The State also recognized that, if it were to deem EPA's choice of technology, SCR, as BACT for only two engines, with no controls for the remaining five generators, Cominco would have an economic incentive to use the far-costlier SCR-equipped engines for back-up purposes only. That, in turn, would largely eliminate the potential NOx reductions from SCR: "If an SCR controlled unit is on standby throughout the year, then the SCR scenario could emit up to *396 more tons of NOx per year* than the Low NOx scenario for all seven units." C.R. 17-045. (emphasis added) Ironically, EPA used its usurped authority to reject maximum emissions reductions in favor of its preferred technology.



### B. Permitting EPA To Veto State Selection of BACT Will Lead To Uncertainty Among Permittees And Applicants, Which Will Frustrate The Act's PSD Program

Beyond increasing the likelihood of out-of-touch and flawed judgments, EPA's intrusion into the state role of determining BACT, if permitted, will inject a disturbing degree of uncertainty into the permitting process. No longer will the States have any real authority and, hence, no longer will applicants be able to rely on the State's word during negotiations or even on the State's issuance of a permit. Rather, applicants will have to guess whether EPA will preempt the State's judgment at any point in or after the permitting process. Or the State might refuse to issue a permit on terms dictated by EPA rather than by the State's independent exercise of its discretion to determine BACT. In both circumstances, the logical outgrowth of the uncertainty created by EPA's power-grab will be permitting paralysis. Applicants likely will do nothing – they simply will not undertake construction or modification of facilities that would require PSD permits. So much for Congress's expectation of state control over inherently local "growth-management decisions." *Alabama Power*, 636 F.2d at 364.

### C. EPA's Reliance On Enforcement Orders Will Render Superfluous The Administrative Process For Determining BACT, Resulting In Poor And Largely Unreviewable BACT Determinations

As part of every EPA-approved SIP, state BACT determinations are subject to testing in administrative hearings and to judicial review. State procedures for

hearings on PSD permitting decisions ensure that those decisions are tested by exposure to diverse public comment, ensure fairness and an opportunity for interested parties to be heard, and enhance the quality of judicial review. *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (C.A.D.C. 1983). All of those goals are defeated if EPA is allowed to reach its own independent BACT decision and then force that decision on states and permittees through enforcement orders. EPA's unilateral decision in this case was made without the benefit of a public hearing, without considering comments from interested parties, without weighing the statutory factors required in the BACT definition, and without the fundamental background necessary to consider those factors in a way that is sensitive to the needs of the local area.

Congress provided for administrative hearings on PSD permit decisions, and did so expressly to allow (among other interested parties) the "representatives of the [EPA] to appear and submit written or oral presentations on . . . control technology requirements." 42 U.S.C. 7475(a)(2). Congress clearly intended for EPA to participate in the state administrative process to help determine BACT, and the basic purpose of that process is to enhance the quality of administrative decisions. The Ninth Circuit's conclusion that EPA is free to refuse to participate in the state administrative process, then criticize the state permitting agency because it failed to provide an adequate justification for its BACT decision defies logic, is unfair to all who participate in the state process, and undermines the system of cooperative federalism that Congress enacted to allow the local persons who are directly affected to have a say in these major decisions that significantly impact their lives.



When Congress granted EPA authority to issue enforcement orders for violations of "requirements" of a SIP or the Act's PSD provisions, it did not intend EPA to use that limited authority as a substitute for participation in and respect for the State's PSD permit issuance process. Yet, in this case EPA declined to challenge Alaska's BACT determination at the state administrative level, thereby denying the parties a full and fair hearing on the issues, and depriving the State of the chance to develop a complete administrative record in support of its BACT decision. EPA instead unilaterally determined BACT based on partial and, in some cases, inaccurate information, and forced Alaska to present the BACT issue to a federal court of appeals on an incompletely-developed administrative record. If EPA's new found authority to make unilateral BACT decisions outside the statutorily required administrative process is allowed to stand, the risk of flawed decision making on important environmental questions in future PSD permitting proceedings will increase.

Once again, the instant case proves the States' point. EPA's cavalier choice of its pet technology, coupled with its refusal to participate in the Alaska administrative process, led to fundamental errors in EPA's analysis, which the Ninth Circuit adopted in its decision. For example, the Ninth Circuit accepted EPA's position that "there were no recent permit decisions involving BACT determinations for diesel engines used as primary power generators," Pet. App. at 14a, when that is patently untrue. An August 1999 memorandum prepared as part of the State's in-depth analysis of the BACT issue, stated that "no similar cases in Alaska have required SCR as BACT," Certified Rec. 21-018, *not* that there are no similar cases. In fact, even the paltry documentation that EPA assembled unilaterally in

lieu of a fair and completely-developed administrative record shows *three* recent Alaska decisions for comparable diesel-fired generators in Unalaska, St. Paul, and Ketchikan; in each case, the State had selected as BACT a control technology less effective than Low NOx – not SCR. 44-007, 45-030.

Had EPA participated in the administrative process that Congress mandated, those facts and others would have received a more meaningful discussion, and perhaps led to more thorough and more reasoned analysis by the agencies and courts that reviewed the record. EPA's refusal to participate in that process deprived the State of Alaska, its citizens, and its environment of the reasoned analysis of PSD permit applications that Congress intended them to receive.

## CONCLUSION

One commentator has observed that "[t]hough generally described as 'cooperative federalism,' the relationship between the states and federal government in environmental policy often resembles that between a feudal lord and his serf." Adler, *supra*, at 11286. The EPA enforcement orders that the Ninth Circuit approved go a long way toward institutionalizing a feudal relationship between the States and EPA under the Clean Air Act's PSD program. But that is not what Congress intended and it is not good for the environment or for the citizens of the States.



Therefore, *Amici* States urge this Court to reverse the judgment of the court of appeals.

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